

REMARKS

This amendment is responsive to the Office Action of October 30, 2008.
Reexamination and reconsideration of the application are respectfully requested.

The Office Action

Claim 10 stands rejected under 35 USC §112.

Claim 13 stands rejected under 35 USC §112, second paragraph.

Claims 1-4, 7-10, and 13 stand rejected under 35 USC §102(b) as being anticipated by Thorsten (US Patent No. 2,076,188).

Claims 5, 6, 11, 12, and 14 stand rejected under 35 USC §103(a) as being unpatentable over Thorsten (US Patent No. 2,076,188).

35 USC §112

Claim 10 has been amended to overcome the rejection under 35 USC §112. In addition, **claim 13** has been canceled. Therefore, all claims now meet the statutory requirements of 35 USC §112.

The Claims of the Present Application Distinguish Over the Cited References

Claim 1 recites a deflector and a receptacle means for receiving a sample of a material flowing downwardly from a lower peripheral edge of the deflector. The receptacle means has an opening at its lower end through which the sample passes.

Thorsten discloses a sampling device including a shaft 18 on which is carried a hollow conical member 24 (cone), including opening 25, and a second cone 55, including opening 56 and an adjustable gate 57. The Examiner has pointed to the cone 24 as the recited deflector and the adjustable gate 57 (and the opening 56) as the recited receptacle means. If the cone 24 is pointed to as the recited deflector, the second cone 55 is also a deflector. In that case, the recited receptacle means is merely the opening 56 (of the adjustable gate 57) in the deflector (second cone 55). Since the receptacle means recited in **claim 1** receives material flowing downwardly from a lower peripheral edge of the deflector, it is clear that the recited receptacle means is separate from the recited deflector--not an opening in the deflector itself as disclosed in Thorsten.

Claim 1 further recites means for moving said receptacle means with respect to said material flowing downwardly. Thorsten fails to disclose the recited means for moving. In addition, the reference fails to even suggest such a means for moving since, given Thorsten merely discloses an opening in the rotating deflector, the reference has no such use for a means for moving, as recited in **claim 1**.

As stated in the present application, it is clear that the claimed rotary sample collector is a simpler apparatus than the device disclosed in Thorsten. This simplicity renders the claimed invention of the present application both cheaper to manufacture and more reliable than the apparatus disclosed by Thorsten, which incorporates multiple crushing stages and a more complicated sampling arrangement.

For the reasons discussed above, **claim 1** and **claims 2-12 and 14**, which depend therefrom, are patentable over Thorsten.

CONCLUSION

For the foregoing reasons, it is submitted that the claims of the present application are in condition for allowance. Early notice thereof is respectfully requested.

It is believed that there is no fee associated with the filing and consideration of this amendment. Should the Commissioner decide that any fee or fee deficiency is due, the Commissioner is hereby authorized to charge any and all such fees, and/or credit any overpayments, incurred as a result of entering this amendment to Deposit Account No. 03-0172, Order No. 30276.04005.

Respectfully submitted,

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